

United States Government

NATIONAL LABOR RELATIONS BOARD 1099 14th STREET NW WASHINGTON DC 20570

June 19, 2013

Re: <u>Bethesda Lutheran Communities</u> Case 19-RC-103018

ORDER

The Employer's Motion for Leave to File Request for Review is denied.

The Employer claims that the Regional Director's Decision and Direction of Election dated May 21, 2013 was not actually served on the Employer until May 22, 2013, and therefore the request for review was due on June 5, 2013, not June 4 as stated in the decision. Section 102.112 of the Board's Rules and Regulations defines the date of service as "the day when the matter served is deposited in the United States mail. The Region's affidavit of service for the Decision and Direction of Election shows that the decision was deposited with the U.S. mail service on May 21, 2013. Therefore, contrary to the Employer, the date of service of the Decision and Direction of Election is May 21, 2013, and the request for review was due 14 days after service, *i.e.*, on June 4, 2013. The Employer's counsel of record is listed on the affidavit of service with the correct address.

Furthermore, contrary to the Employer, Section 102.67(b) of the Board's Rules and Regulations *does* apply to decisions and directions of election, and not only to a decision dismissing a petition. In its motion, the Employer cites language from Section 102.67(b) that, in fact, does *not* appear in that section of the Board's *current* Rules and Regulations,² but which *does* appear in that section of the Board's pending updates to its representation procedures, the implementation of which was suspended on May 15, 2012.³ Thus, the Employer's argument rests on Board rules that are not presently in effect.

It seems likely that any confusion over the due date could have been resolved had the Employer's counsel contacted the Regional Office about the perceived inconsistency.

² See http://www.nlrb.gov/sites/default/files/documents/254/manual-part 102 -2-11-8-12.pdf.

See, e.g., http://www.nlrb.gov/news-outreach/news-releases/nlrb-suspends-implementation-representation-case-amendments-based-court-. The Employer, tracking the language of the suspended updates, mistakenly quotes Section 102.67(b) as stating ". . . That within 14 days after service of a decision dismissing a petition any party may file a request for review of such a dismissal with the Board in Washington, DC; Provided, further, That any party may, after the election, file a request for review of a regional director's decision to direct an election within the time period specified and described in §102.69."

Current Section 102.67(b) states, in full:

A decision by the Regional Director upon the record shall set forth his findings, conclusions, and order or **direction**. The decision of the Regional Director shall be final: Provided, however, That within 14 days after service thereof any party may file a request for review with the Board in Washington, D.C. The Regional Director shall schedule and conduct any election directed by the decision notwithstanding that a request for review has been filed with or granted by the Board. The filing of such a request shall not, unless otherwise ordered by the Board, operate as a stay of the election or any other action taken or directed by the Regional Director: Provided, however, That if a pending request for review has not been ruled upon or has been granted ballots whose validity might be affected by the final Board decision shall be segregated in an appropriate manner, and all ballots shall be impounded and remain unopened pending such decision. (Emphasis added).

Next, the Employer claims that Section 102.69 sets the time for filing of a request for review of a decision and direction of election as "within 14 days after the tally of ballots." Current Section 102.69 sets no such time limits. Rather, this section pertains to post-election procedures, specifically the filing of post-election objections, the issuance of regional directors' reports on challenged ballots and objections, and the filing of exceptions. Accordingly, contrary to the Employer, it may not attempt to file this request for review under the provisions of Section 102.69.

Finally, the electronic filing rules on the Board's website, which the Employer attached as Exhibit B, clearly indicate under the section entitled "E-Filings Must Be Timely" that "[t]he Agency will accept electronic filings up to 11:59 p.m. in the local time zone of the receiving office on the due date."

In sum, the Employer failed to file its request for review in a timely manner. Accordingly, the motion is denied.

By direction of the Board:

Gary Shinners Executive Secretary

cc: Parties

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⁴ Here, too, the Employer appears to cite the suspended updates to the representation procedures, rather than the currently applicable Rules and Regulations.